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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

5 In the Matter of the Accusation and Petition to  
6 Revoke Probation Against:

Case No. 6082

7 ELI ANN FARMER  
8 131 Woodcrest Place  
9 Santa Cruz, CA 95065

OAH No. 2008080560

9 Vocational Nurse License No.  
10 VN 143399


11 Respondent.  
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13 DECISION  
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15 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the  
16 Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled  
17 matter.  
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19 This Decision shall become effective on March 15, 2009.

20 IT IS SO ORDERED this 13<sup>th</sup> day of February, 2009.

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John P. Vertido, L.V.N.  
President



BEFORE THE  
BUREAU OF VOCATIONAL NURSING AND  
PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition  
to Revoke Probation Against:

ELI ANN FARMER  
Santa Cruz, California

Vocational Nurse License No. VN 143399

Respondent.

Case No. 6082

OAH No. 2008080560

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on November 5, 6 and 7, 2008, in Oakland, California.

Senior Legal Analyst Lydia Zane represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Bureau of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

Respondent Eli Ann Farmer appeared and represented herself.

The matter was submitted for decision on November 7, 2008.

**FACTUAL FINDINGS**

*Licensing Background*

1. On February 15, 1989, the Board of Vocational Nursing and Psychiatric Technicians<sup>1</sup> issued vocational nurse license number VN 143399 to respondent Eli Ann Farmer. The current license expiration date is June 30, 2010.

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<sup>1</sup> On July 1, 2008, the Board of Vocational Nursing and Psychiatric Technicians became the Bureau of Vocational Nursing and Psychiatric Technicians. References herein to "board" or "bureau" correspond to the entity in existence at the time.



2. Effective December 29, 2000, pursuant to a stipulated settlement, the board revoked respondent's license, but stayed the revocation and placed respondent on probation for three years. Disciplinary action was taken because of respondent's 1996 diversion of controlled substances for her own use during her employment at Watsonville Community Hospital, and her 1997 conviction of violating Health and Safety Code section 11173, subdivision (a) (obtaining controlled substance by fraud, deceit, misrepresentation or subterfuge).

3. Effective July 16, 2004, following an administrative hearing on February 25, 2004, the board revoked respondent's license, but stayed the revocation and placed respondent on probation for an additional four years. Disciplinary action was taken because respondent failed to comply with the condition of probation requiring her to abstain from using controlled substances. The board found that respondent's relapse into drug use was precipitated by her being prescribed Lortab<sup>4</sup> for injuries suffered in an automobile collision on April 18, 2003. On June 14, 2003, she voluntarily entered a drug counseling and rehabilitation program, The Camp Recovery Center in Santa Cruz. After completing the program on July 7, 2003, respondent lived in a clean and sober house for two months. The board stated in its decision:

Respondent compellingly points out that she is firmly devoted to recovery from her past drug abuse habits. She is keenly interested in maintaining her position within the health care community. Respondent affirms that a further period of probation will show that she is fully compliant with the Board's requirement that she remain free from drug abuse.

4. The conditions of respondent's probation include the following:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the Respondent as part of

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<sup>4</sup> Lortab, a brand name for hydrocodone and acetaminophen, is a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (c), and a dangerous drug under Business and Professions Code section 4022. (Vicodin is another brand name for this medication.)



her licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS

Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

5. NOTIFICATION TO EMPLOYER

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.



Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

#### 10. COST RECOVERY REQUIREMENTS

Respondent shall pay to the board its costs of investigation and prosecution in the amount of one thousand eight hundred nine dollars and fifty cents (\$1,809.50) within thirty (30) days of the effective date of this decision, or by way of installment payments in a manner satisfactory to the board.

Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one year, the license of any respondent who demonstrates financial hardship. The Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one year period.

Except as provided above, the Board shall not renew or reinstate the license of any Respondent who has failed to pay all the costs as directed in a Decision.

#### 11. VIOLATION OF PROBATION

If the Respondent violates the conditions of her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the Respondent's license will be fully restored.



13. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

14. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

15. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the Respondent's current employer.

5. Complainant filed the accusation and petition to revoke probation on July 15, 2008. Pursuant to condition 11 of respondent's probation, the probationary period was automatically extended pending a decision in this proceeding.

*What This Case is About*

6. This case involves instances of unprofessional conduct and violations of probation by respondent, most of which are related to her relapse into drug addiction for about one year. Respondent's abuse of prescribed controlled substances culminated in her arrest on June 21, 2007 for driving under the influence of alcohol or drugs. Her struggle with chemical dependency has been complicated by her bipolar disorder, which was not diagnosed until 2006.

*Respondent's Relapse*

7. Sometime in early 2006 respondent started receiving prescription pain medication for left lower quadrant pain. By June 2006, she was abusing opiate medications and wanted help tapering off these drugs. Respondent sought help from Jeffrey Solinas,



M.D., at his clinic in Watsonville, but she went to Dr. Solinas because she knew from his reputation that she could get whatever prescription drugs she wanted from him. Dr. Solinas ended up giving respondent prescriptions for stronger and stronger pain medications, including fentanyl transdermal patches,<sup>2</sup> methadone,<sup>3</sup> Vicodin, Percocet<sup>4</sup> and OxyContin.<sup>5</sup> In her relapse, respondent was unable to stop taking these narcotics. She was working at Dominican Hospital, but she denies ever taking narcotics at work. Respondent concedes she might have had narcotics in her system when she was at work, but she denies ever being impaired by drugs while on duty.

8. In May 2007, respondent took time off work because of problems with her gallbladder. In severe pain, she was hospitalized from May 10 to 13, although she did not have surgery. Respondent went back to work June 4. During this time, respondent was taking Percocet, OxyContin and fentanyl, and her drug use was increasing.

### *DUI Arrest & Conviction*

9. On June 21, 2007, respondent worked until about 3:15 p.m. and then drove to Watsonville to see Dr. Solinas. Respondent thinks Dr. Solinas gave her prescriptions for Percocet and fentanyl patches that day. She was in an impaired state driving home to Santa Cruz, having taken Percocet, fentanyl and Ativan.<sup>6</sup> Around 6:45 p.m., a California Highway Patrol officer found her by the side of Highway 1 attempting to change a tire on her vehicle. The officer saw respondent chewing on a stiff piece of plastic (her mouth was filled with a white filmy substance), and he asked what was in her mouth. She told him it was a homeopathic remedy for nicotine addiction, when in fact it was a fentanyl patch. Respondent's speech was thick and slurred, she was unsteady on her feet and she seemed confused. When the officer asked her if she was taking any prescription drugs or if she had been drinking that day, respondent very indignantly told him she had not been drinking and did not take drugs, prescription or otherwise. She asserted that she had been clean and sober for four years. A second officer who arrived to take over the investigation asked respondent again about drugs and alcohol, and she said she had taken Lexapro, Topamax and Protonix.

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<sup>2</sup> Fentanyl is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (c)(8), and a dangerous drug under Business and Professions Code section 4022.

<sup>3</sup> Methadone is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (c)(14), and a dangerous drug under Business and Professions Code section 4022.

<sup>4</sup> Percocet, a brand name for oxycodone and acetaminophen, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(N), and a dangerous drug under Business and Professions Code section 4022.

<sup>5</sup> OxyContin contains oxycodone in a timed-release tablet.

<sup>6</sup> Ativan, a brand name for lorazepam, is a benzodiazepine used to treat anxiety.



but no other medication. After respondent failed the field sobriety tests, she was arrested for driving under the influence of alcohol or drugs and taken into custody. The officers found in her vehicle numerous loose pills as well as two unmarked containers of pills, an unmarked bottle containing a clear viscous substance, and a used syringe. Some pills were found in respondent's wallet, and fentanyl patches were found in her purse. She told the officers that all the medications were hers except for the pills in her wallet, which she said were Soma<sup>8</sup> pills she was holding for a friend. Respondent spent five hours in jail following her arrest.

10. After her arrest, respondent knew she had made a mistake and was frightened of the consequences. She "detoxed" herself from narcotics and has taken no controlled substances since June 21, 2007. Respondent did not return to work until June 30.

11. On June 28, 2007, a criminal complaint was filed charging respondent with violations of Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance without a prescription - oxycodone); Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs); Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance without a prescription); Business and Professions Code section 4060 (possession of a controlled substance without a prescription - Soma and Lexapro); and Business and Professions Code section 4140 (unauthorized possession of hypodermic needle or syringe).

12. On August 28, 2007, respondent was convicted on a plea of nolo contendere of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs), a misdemeanor, and the remaining charges were dismissed. Imposition of sentence was suspended and a conditional sentence was granted for 60 months. Conditions of respondent's sentence included serving two days in county jail, with credit for time served of two days; completing a First Offender Drinking Driver Program; and paying fines and fees totaling \$2,088 in installments of \$50 per month beginning October 1, 2007.

#### *Violations of Probation*

13. Condition 1 - Obey All Laws: Respondent violated this condition of her probation by driving under the influence of drugs on June 21, 2007, and by failing to notify the board in writing of her arrest within five days. On July 2, respondent left a voice mail message for Marilyn Kimble, her probation monitor at the board. When Kimble phoned respondent back the following day, respondent told her about the arrest but said she was not sure if any criminal charges would be filed because she was only taking prescription medicines. Respondent seemed very concerned about what action the board would take. Kimble asked respondent to send a letter with details of the incident. On July 9, the board received a letter from respondent dated July 2 (along with her quarterly written report for the second quarter of 2007). In her letter respondent stated:

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<sup>8</sup> Soma, a brand name for carisoprodol, is a dangerous drug under Business and Professions Code section 4022.



I got a flat tire & was on the side of the road when a policeman pulled over to help me & arrested me for being under the influence of medications & having them. I had been in the hospital for 5 days, did not end up having surgery, but was taking pain medications for my gall bladder & I took them with my bipolar meds. I have not been charged with any crime & am not sure if I will be.<sup>9</sup> I will send the report when I get it.

14. Condition 2 -- Quarterly Reports: The quarterly written reports required by this condition of respondent's probation ask the probationer: "Are you currently taking prescription medications?" After boxes for "Yes" and "No," the probationer is directed: "If your answer is yes, please state the name of the medication, the dosage, when it was prescribed and the reason prescribed." During her 2006 to 2007 drug relapse, respondent failed to disclose that she was taking fentanyl, methadone, Vicodin, Percocet, OxyContin and Soma.<sup>10</sup> Only in her quarterly report for the second quarter of 2007, dated July 3, 2007 (after her arrest), did she report taking any of these medications. Respondent listed Percocet, oxycodone, Soma, fentanyl and Ativan, with a note that the medications were for "gallbladder pain" and the Ativan had been "in hospital for anxiety." (She did not list the dosage for each medication or when it was prescribed.)

In her quarterly reports for the first, third and fourth quarters of 2006, respondent checked the "No" box in response to the question asking whether she was taking prescription medications, whereas in her reports for the third and fourth quarters of 2005, the second quarter of 2006, and the four quarters of 2007, she reported taking Lexapro (for depression) and trazodone (for depression and sleep). Respondent was taking these medications during the quarters when she reported taking no prescription medications, so her "No" answers were false.

In her quarterly reports for the second quarter of 2005 through the first quarter of 2008 (except for the three quarters where she said she was taking no prescription medications), respondent failed to properly report the prescription medications she disclosed. She omitted the dosage and/or the date prescribed and/or the reason prescribed.

One of the questions in the quarterly report is: "In this quarter were you disciplined by your employer in any manner, i.e., adverse action, counseling, reprimand, suspension, demotion, termination?" In her quarterly report for the third quarter of 2007, respondent answered "No" to this question. She failed to disclose that on August 15, 2007, she received a "Verbal Written" disciplinary action from Dominican Hospital. The stated basis for this action was: "8/8/07 did not administer routine meds at 1300 hrs. - Did not chart administration of narcotic medication (PRN) on 6/14/07 @ 1340." (The June 14 omission

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<sup>9</sup> Respondent had, in fact, been charged with five crimes on June 28, 2007, but it is not known whether she was aware of the criminal complaint when she wrote this letter.

<sup>10</sup> On July 7, 2006, respondent filled a prescription for Soma from Miki Joy, M.D.,



came to light in a pharmacy audit, and the August 8 omission was reported to respondent's supervisor by another nurse.) Respondent asserts that her nondisclosure of this discipline was an oversight on her part. Since a lot of employees received these disciplinary actions, she did not think it was "a big deal."

The quarterly written report form instructs the probationer that "Reports are due postmarked seven (7) days from the close of each quarter" and that "FAILURE TO SUBMIT A QUARTERLY REPORT SEVEN (7) DAYS FROM THE CLOSE OF EACH QUARTER WILL CONSTITUTE A VIOLATION OF PROBATION." Respondent failed to submit the following quarterly reports by the due date:

<u>Reporting Period</u>	<u>Due Date</u>	<u>Postmark Date</u>	<u>Days Delinquent</u>
Oct - Dec 2004	1/7/05	1/12/05	5
Jan - Mar 2005	4/7/05	4/14/05	7
Apr - Jun 2005	7/7/05	7/21/05	14
Jul - Sept 2005	10/7/05	10/18/05	11
Apr - Jun 2006	7/7/06	7/14/06	7*
Oct - Dec 2006	1/7/07	1/20/07	13*
Jan - Mar 2008	4/7/08	4/9/08	2*

\* Respondent notified the board/bureau by telephone call or a note on the form explaining that the report was late due to unavailability of her supervisor to sign the report or due to illness or both.

The quarterly report for the first quarter of 2007 was also late; the postmark date is not available, but because the board did not receive the report until April 17, 2007, it is presumed that respondent mailed it after April 7. She apparently telephoned the board to explain that the report would be late for one of the reasons stated above.

15. Condition 5 - Employer Notification & Reports: This condition requires that "Respondent shall cause each health care employer to submit quarterly reports to the Board." Respondent was directed to have her supervisor complete a Work Performance Evaluation form, and to send this form to the board along with her quarterly written report. The Work Performance Evaluations accompanying the late quarterly reports described in Finding 14 were also late by the same amount of time.

16. Condition 10 - Cost Recovery: This condition required respondent to pay the board \$1,809.50 within 30 days of the effective date of the decision (July 16, 2004) "or by way of installment payments in a manner satisfactory to the board." Complainant alleges in the petition to revoke probation that respondent agreed on or about August 26, 2004, to make monthly payments of \$72.38 beginning in September 2004, but this was not established. The quarterly written report form asks probationers whether they have paid recovery costs as directed in the terms and conditions of probation, and to provide an explanation if they answer "No." Another question asks: "Do you want to establish a payment plan?" In her



quarterly report for the third quarter of 2004, respondent said she had not paid any costs, and she explained: "Not sure when payment plan starts. Took some time off because of miscarriage. Don't think payment plan started. Haven't heard from [illegible] yet." She checked the box for wanting to establish a payment plan. In her next quarterly report, for the fourth quarter of 2004, respondent checked the same boxes as before, explaining: "I need a payment plan & where to send. I need least amt possible." In her quarterly reports for 2005, respondent checked the same boxes but provided no explanation. In her report for the first quarter of 2006, respondent checked the boxes and explained: "I need to set up a payment plan. Finances have been & are tight." In her report for the second quarter of 2006, she explained: "Want to get a payment plan please."

In October 2005, Marilyn Kimble took over respondent's case from the previous probation monitor, Mariann Fagunes. On July 24, 2006, Kimble sent respondent a letter summarizing her probation status. Respondent had paid none of the cost recovery, so Kimble instructed her: "You are to begin making monthly payments as of August 2006. You will make 20 payments of \$86.16 and one final payment of \$86.30. Payments are due by the fifteenth day of the month." Between November 2006 and November 2007, respondent made monthly payments totaling \$1,109.50. On February 13, 2008, the board sent her a demand for payment of \$700. In March 2008, respondent's payment of \$100 was accompanied by a note in which she claimed to have thought she had paid the full amount of costs in November 2007. Between April and October 2008, respondent paid \$150. On October 3, 2008, she paid the costs in full with a payment of \$450. (Respondent had to take out a loan to make this final payment.)

17. Condition 13 Chemical Dependency/Support Groups: This condition requires respondent to attend chemical dependency support group meetings, and a requirement of two meetings per week was established in respondent's first meeting with Mariann Fagunes. This condition states that "Verified documentation of attendance shall be submitted by the Respondent with each quarterly report." The board provides Attendance Verification Forms but will accept any similar documentation showing, for each meeting, the date, name of group, and signature by group facilitator or sponsor. Respondent failed to comply with this condition, as set forth below:

<u>Reporting Period</u>	<u>Due Date</u>	<u>Postmark Date</u>	<u>Days Delinquent</u>
Oct - Dec 2004	1/7/05	1/12/05	5
Jan - Mar 2005	4/7/05	4/14/05	7 - Letter in lieu of form
Apr - Jun 2005	7/7/05		None received
Jul - Sept 2005	10/7/05		None received
Oct - Dec 2005	1/7/06	1/5/06	Letter in lieu of form
Jan - Mar 2006	4/7/06		None received
Apr - Jun 2006	7/7/06		None received
Jul - Sept 2006	10/7/06	(not late)	Letter in lieu of form
Oct - Dec 2006	1/7/07	1/20/07	13 - Letter in lieu of form
Apr - Jun 2007	7/7/07	7/9/07	2 - Letter in lieu of form



Respondent apparently was once instructed to send a letter in lieu of an attendance verification form when she claimed that someone had taken her form. She was not authorized to thereafter substitute letters for attendance verification forms. The letter for the fourth quarter of 2006 was typical of those submitted by respondent. It was signed by Karla Leggett, respondent's sponsor, and stated: "This is to verify Eli Farmer's attendance at Narcotics Anonymous meetings. I am here [sic] sponsor & she attends 3 - 4 meetings a week."

For the first quarter of 2007, respondent submitted a letter in lieu of an attendance verification form, and it was late. (The postmark date for the quarterly report and accompanying documentation is not available, but because the board did not receive the report until April 17, 2007, it is presumed that respondent mailed it after April 7.)

18. Condition 14 - Abstain from Controlled Substances: This condition requires respondent to abstain from controlled substances and dangerous drugs, except when lawfully prescribed for a bona fide illness. During her 2006-2007 relapse, respondent violated this condition by taking prescription medications for reasons other than a bona fide illness.

19. Condition 15 - Biological Fluid Samples: In order to comply with this condition, the probationer must first select a facility to perform random biological fluid testing (BFT). According to respondent, she informed Mariann Fagunes that she could not find a lab in Santa Cruz to do BFT, and Fagunes told respondent to let her know when she did find a facility. Respondent concedes that she did not follow through on locating a facility. In her letter of July 24, 2006, Marilyn Kimble directed respondent to select a BFT facility meeting the board's requirements. She enclosed the board's forms titled "Probationer's Responsibilities for Random Body Fluid Screening" and "Testing Facility Requirements for Random Biological Fluid Screening." Kimble gave respondent a deadline of August 24, 2006 to provide information on the facility she selected. Respondent wrote Kimble a letter, dated October 5, 2006, in which she stated: "I am still unable to find a lab that is willing to do the biological testing. I am continuing to look and will notify you when I have found a place." Respondent did not make arrangements with a BFT facility until August or September 2008. The nearest facility she could find is in San Jose, a 40 minute drive from Santa Cruz. She has had two random screenings, on September 15 and October 14, 2008, both of which were negative for drugs.

Respondent also has negative drug test results from screenings not authorized by the board. On July 16 and October 8, 2007, respondent had Karla Leggett submit respondent's urine to a lab for testing. On September 23, 2008, respondent sent a hair specimen to a lab for testing.

20. Certification Under Penalty of Perjury: Respondent signed each quarterly report under the following declaration:



I declare under penalty of perjury under the laws of the State of California that the foregoing, the enclosed statements or documents are true and correct, and I further declare that I have obeyed all federal, state and local laws, including all statutes and regulations governing my license and that I have fully complied with the terms and conditions of the probation program established by the Board during this period of my probation.

### *Respondent's Evidence*

21. Respondent is a 47-year-old woman with a long history of chemical dependency and depression. In June 2006, respondent was diagnosed with bipolar disorder, after her psychotherapist referred her to psychiatrist Andrew Kumasaka, M.D. The first mood stabilizer Dr. Kumasaka prescribed was lithium, but the side effects of this medication caused him to switch respondent to Lamictal in January 2007. Respondent had a hard time coming to terms with her bipolar disorder, because of the stigma of mental illness. She only started taking Lamictal regularly in June 2007, around the time of her arrest. Respondent has continued to take Lexapro, an antidepressant, and trazodone, an antidepressant which she takes for sleep.

22. In a written statement to the bureau, respondent stated: "It took getting arrested in June 2007 to shock me onto the right path and to get me out of my denial and take more control of my life." Since her arrest, she has not taken any controlled substances, she has adhered to the medication regimen for her bipolar disorder, and she has pursued a healthy lifestyle. She now feels much better physically and emotionally than she did before. In the past, even when she was not abusing drugs, respondent had a compulsion to change the way she felt (by taking drugs). This does not happen anymore. She feels less anxiety, sleeps better, exercises regularly, and has fewer aches and pains. The only pain medication she ever takes is Motrin. Respondent sees Dr. Kumasaka every month or two, primarily for medications management.

23. Respondent lives in a house with her fiancé and another couple, all of whom are in recovery from substance abuse. During her 2006-2007 relapse, respondent hid her drug abuse from them and from her sponsor, Karla Leggett, as she continued to attend 12-step meetings. Respondent explains that when she is abusing drugs, it is very easy for her to be dishonest. She asserts that she has kept a clear slate, with no secrets or lies, since June 2007. (This is at odds with respondent's misleading statements to the board in her July 2, 2007 letter and quarterly report, when she said her pain medications were for gallbladder pain.)

24. Sharon Lutman, R.N., M.F.T., facilitates a support group in the San Jose area for chemically dependent health care professionals. Respondent was a member of this group from 2003 until 2004, when she moved to Santa Cruz. Lutman testified at respondent's



administrative hearing in February 2004, and respondent contacted her in September 2008 seeking her advice and assistance in the current proceeding. Lutman offered to help respondent prepare a relapse prevention plan for both her drug addiction and her bipolar disorder. (In Lutman's experience, untreated bipolar disorder interferes with recovery from substance abuse.) Lutman met with respondent twice around the beginning of October 2008. At their first meeting, they discussed how to prepare a relapse prevention plan. At their second meeting, Lutman reviewed respondent's first draft of the plan and provided feedback for developing the final plan.

25. Respondent's newly-developed relapse prevention plans (one for substance abuse and one for mental illness/bipolar disorder) identify relapse warning signs and describe a plan to deal with these situations, with the assistance of her relapse prevention team members (her sponsor, fiancé and housemates). Respondent has enlisted team members to, among other things, accompany her to medical appointments, hold and dole out any prescription medications, make sure she submits her quarterly probation reports on time, and watch her for signs of mania.

26. Sharon Lutman testified at the hearing that she believes these plans are adequate to enable respondent to cope with stress and maintain her recovery from substance abuse and bipolar disorder. In Lutman's opinion, respondent needs a lot of external structure and controls, but with careful monitoring and assistance from others she can practice safely and follow the terms of probation. Lutman believes respondent should be allowed to keep her nursing license but the bureau should more closely monitor her.

27. Karla Leggett testified on respondent's behalf, as did respondent's housemate and one of respondent's sisters. They all attest to the positive changes they have observed in respondent since June 2007. She is more stable, focused and goal-oriented, and she takes responsibility for her problems. Leggett testified that respondent is on the sixth step of the 12-step program, and she is good about keeping up with her "step work."

28. Respondent attends four to seven 12-step meetings per week, including a weekly meeting in Watsonville of a nurse support group.

29. As of December 12, 2007, respondent was enrolled in the Alto Counseling Center Drinking Driver Program, and she had completed most of the program requirements. It is not known if respondent completed this program, although she identified the December 12, 2007 status letter in her exhibit list as "Alto First Offender DUI Class Completion."

30. Since 2004, respondent has worked as a vocational nurse at Dominican Hospital in the Behavioral Health Unit. She loves her job, which she describes in a written statement as follows:

My patient population consists mostly of schizophrenics, suffering addicts, manic-depressives, homeless and



schizoaffectives [sic]. I work in a volatile, bizarre environment where I have to engage with people that aren't really living in reality. I frequently have to do "take downs" with violent patients that could potentially harm themselves or others. I know that my patients need my help and I have a way with these people, as it is frequently I who talks them into a calmer more realistic way of thinking and acting.

In her performance evaluations, respondent has always been rated as meeting or exceeding standards. Several of respondent's coworkers testified on her behalf, and others wrote letters of support for her. They praise her as a compassionate and conscientious professional and a valued team member.

31. Respondent submitted letters of support from a large number of friends, associates and family members, lending credence to Karla Leggett's assertion that "anyone who knows [respondent] loves her."

32. Respondent is asking the bureau to give her another chance to prove herself on probation. She asserts that she presents no risk to patients, and there are more creative ways to address her probation violations than revoking her license. Respondent understands the bureau's resources are limited, but she feels she needs closer scrutiny. She proposes stricter conditions of probation, e.g., automatic license surrender if she tests positive for drugs or is found in possession of narcotics, more frequent random drug testing, requiring her to notify the bureau if she sees a new doctor, and requiring her doctor to notify the bureau if respondent stops taking her bipolar medications.

#### *Costs of Investigation and Enforcement*

33. As of October 15, 2008, the bureau had incurred the following costs for the investigation and prosecution of this case:

Investigative services from Division of Investigation,  
Department of Consumer Affairs:

2006/2007:	1.00 hr. @ \$175/hr	--	\$ 175.00
2007/2008:	34.00 hrs. @ \$161/hr	--	\$5,474.00

Attorney General's costs for legal services:

<u>Paralegal</u>			
2007/2008:	57.75 hrs. @ \$101/hr.		\$5,832.75
2008/2009:	21.25 hrs. @ \$101/hr.		\$2,146.25



Attorney

2008/2009: 1.25 hrs. @ \$158/hr. - \$ 197.50

Total \$13,825.50

34. Respondent feels responsible for paying the bureau's costs, but she does not know how she can do so in her current financial situation. Her take-home pay is \$2,200 to \$2,400 per month, and she lives "paycheck to paycheck." Respondent pays about \$700 in rent and \$400 per month on a \$6,000 loan she recently took out. (About \$5,000 of the loan went for costs related to her legal cases: the final payment on the bureau's last cost recovery award; criminal court costs; the hair analysis; and payments to Dr. Kumasaka and another witness for their time testifying.)

### LEGAL CONCLUSIONS

#### *Authority for License Discipline*

1. Business and Professions Code section 2878 sets forth the bureau's authority to suspend or revoke a vocational nurse's license. Under subdivision (a), a nurse may be disciplined for unprofessional conduct, which includes, but is not limited to, incompetence or gross negligence in carrying out usual nursing functions (subd. (a)(1).) Under subdivision (d), a nurse may be disciplined for violating or attempting to violate any provision of the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840 et seq.). Under subdivision (j), a nurse may be disciplined for committing any act involving dishonesty, related to the duties and functions of a licensee.

Business and Professions Code section 2878.5 provides, in relevant part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability



to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

[Subds. (d) & (e) omitted.]

2. Because respondent's DUI offense involved the consumption of controlled substances and dangerous drugs, her criminal conviction constitutes unprofessional conduct under Business and Professions Code section 2878.5, subdivision (e). Cause to suspend or revoke her license therefore exists under Business and Professions Code section 2878, subdivision (a).

3. The acts underlying respondent's criminal conviction, consuming drugs to the point of impairment and then driving a motor vehicle, were inherently dangerous to respondent and the public. These acts constitute unprofessional conduct under Business and Professions Code section 2878.5, subdivision (b). Cause to suspend or revoke her license therefore exists under Business and Professions Code section 2878, subdivision (a).

4. Respondent's failure to disclose in her quarterly probation reports the prescription medications she was abusing during her 2006-2007 relapse, and her August 2007 disciplinary action at Dominican Hospital, constitute acts of dishonesty that are related to her licensed duties and functions. Cause to suspend or revoke her license therefore exists under Business and Professions Code section 2878, subdivision (i).

5. The accusation alleges cause for license discipline under Business and Professions Code section 2878, subdivision (a)(1), for gross negligence and incompetence, but it was not established that respondent was grossly negligent or incompetent in performing nursing functions.

6. The accusation alleges cause for license discipline under Business and Professions Code section 2878, subdivision (a)(1), by reason of respondent's violations of Business and Professions Code section 2878.5, subdivisions (b) and (c), being substantially related to the qualifications, functions or duties of a licensed vocational nurse. But the regulation cited by complainant (Cal. Code Regs., tit.16, § 2521) pertains to whether a crime or act is "substantially related" for purposes of denial, suspension or revocation of a license under Division 1.5 (commencing with section 475) of the Business and Professions Code. The accusation does not allege cause for discipline under that division, or under Business and Professions Code section 2878, subdivision (f) (authorizing license discipline for conviction of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse).



7. The accusation alleges cause for license discipline under Business and Professions Code section 2878, subdivision (d), by reason of respondent's failure to report her noncompliance with the terms and conditions of her probation and the bureau's 2004 decision and order. However, respondent's failure to report her noncompliance does not constitute a violation or attempted violation of the Vocational Nursing Practice Act.

#### *Violations of Probation*

8. Condition 11 of respondent's probation authorizes the bureau to set aside the stay order and impose the stayed revocation of respondent's license if she violates the conditions of her probation. Cause to set aside the stay order and impose the stayed revocation exists, by reason of the violations of probation set forth in Findings 13 through 19.

#### *Appropriate Discipline*

9. The bureau has given respondent two chances to keep her license on a probationary basis, and both times she relapsed into drug abuse and violated the terms and conditions of probation. This is a serious matter, even though there is no evidence that respondent acted unprofessionally while on duty as a nurse. Respondent's previously undiagnosed bipolar disorder is now being treated, and she has been drug-free since June 2007, but this does not assure that she would comply with the conditions of a third term of probation. Respondent's suggestion that the bureau impose stricter probation requirements and oversight is not feasible. The bureau does not have the resources to provide more oversight or monitor more stringent conditions for violation-prone probationers, nor should it have to do so. It would be contrary to the public interest to allow respondent to keep her vocational nurse license.

#### *Costs of Investigation and Enforcement*

10. Complainant has requested that respondent be ordered to pay the bureau the costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement are \$13,825.50. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. The only factor militating in respondent's favor is her financial ability to pay a cost recovery award. Respondent's financial circumstances are such that she would be unable to pay more than a small cost recovery award, and it is presumed that the revocation of her vocational nurse



license will have a significant negative impact on respondent's income.<sup>11</sup> Consequently, it would be appropriate to reduce the cost recovery to \$1,000.

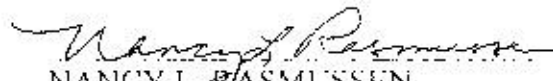
#### ORDER

1. Vocational nurse license number VN 143399 issued to respondent Eli Ann Farmer is revoked.

2. The probation granted to respondent Eli Ann Farmer effective July 16, 2004, is revoked, the stay order is set aside, and the revocation is imposed.

3. Respondent Eli Ann Farmer shall reimburse the bureau for its costs of investigation and enforcement in the amount of \$1,000.

DATED: *December 9, 2008*

  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>11</sup> In recommending that respondent's license be revoked, complainant's representative stated that respondent would not be required to reimburse the bureau for its costs until she petitioned for reinstatement. Assuming that respondent seeks reinstatement some two years or more after her license is revoked, it is unlikely that her financial situation will have improved.



**FILED**

JUL 15 2008

**Board of Vocational Nursing  
and Psychiatric Technicians**

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Senior Legal Analyst

**BEFORE THE  
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation/Petition to  
Revoke Probation Against:

Case No. 6082

ELI ANN FARMER  
131 Woodcrest Place  
Santa Cruz, CA 95065  
Vocational Nurse License No. VN 143399

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Bureau of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs. Pursuant to Business and Professions Code section 101.1(b) and 150, the Department of Consumer Affairs has succeeded to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of the Board and its executive officer; that the department is under the control of the Director of Consumer Affairs.

2. On or about February 15, 1989, the Bureau of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 143399 to Eli Ann Farmer



(Respondent). The Vocational Nurse License was in effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Eli Ann Farmer," Case No. 6082, the Bureau of Vocational Nursing and Psychiatric Technicians, issued a decision, effective December 29, 2000, in which Respondent's Vocational Nurse License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

4. In a disciplinary action entitled "In the Matter of the Petition to Revoke Probation Against Eli Ann Farmer", Case No. 6082, the Bureau of Vocational Nursing and Psychiatric Technicians, issued a decision, effective July 16, 2004, in which Respondent's license was revoked. However the revocation was stayed and respondent's license was placed on probation for an additional three (3) year term. The license is active and renewed through June 30, 2010. A copy of that decision is attached as Exhibit B and is incorporated by reference.

#### JURISDICTION

5. This Accusation and Petition to Revoke Probation is brought before the Bureau of Vocational Nursing and Psychiatric Technicians (Bureau), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

#### STATUTORY PROVISIONS

6. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Bureau may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

7. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four



1 years after the expiration.

2           8.     Section 2878 of the Code states in pertinent part that the Bureau may  
3 suspend or revoke a license issued under this chapter (The Vocational Nursing Practice Act,  
4 (Bus. & Prof. Code, 2840, et seq.) for any of the following:

5               (a) Unprofessional conduct, which includes, but is not limited to, the following:

6                   (1) Incompetence, or gross negligence in carrying out usual nursing functions.

7               ...

8               (d) Violating or attempting to violate, directly or indirectly, or assisting in or  
9 abetting the violating of, or conspiring to violate any provision or term of this chapter.

10             ...

11             (j) The commission of any act involving dishonesty, when that action is related to  
12 the duties and functions of the licensee.

13           9.     Section 2878.5 of the Code states:

14               In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person  
16 licensed under this chapter to do any of the following:

17             ...

18               (b) Use any controlled substance as defined in Division 10 of the Health and  
19 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an  
20 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,  
21 or to the extent that the use impairs his or her ability to conduct with safety to the public the  
22 practice authorized by his or her license.

23               (c) Be convicted of a criminal offense involving possession of any narcotic or  
24 dangerous drug, or the prescription, consumption, or self-administration of any of the substances  
25 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is  
26 conclusive evidence thereof.

27           10.    Section 125.3 of the Code provides, in pertinent part, that the Bureau may  
28 request the administrative law judge to direct a licensee found to have committed a violation or



1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

3           11.     Section 11032 of the Health and Safety Code provides, in pertinent part,  
4 that the term "narcotics" means controlled substances classified in Schedule I or II as defined in  
5 section 11054 or 11055 of that code.

6           12.     Section 11032 of the Health and Safety Code provides, in pertinent part,  
7 that the term "restricted dangerous drugs" means controlled substances classified in Schedules III  
8 and IV as defined in sections 11056 and 11057 of that code.

### 9                               REGULATORY PROVISIONS

10           13.     California Code of Regulations, title 16, section 2519, states that as set  
11 forth in Section 2878 of the Code, gross negligence is deemed unprofessional conduct and is a  
12 ground for disciplinary action. As used in Section 2878 "gross negligence" means a substantial  
13 departure from the standard of care which, under similar circumstances, would have ordinarily  
14 been exercised by a competent licensed vocational nurse, and which has or could have resulted in  
15 harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there  
16 was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall  
17 be considered a substantial departure from the above standard of care.

18           14.     California Code of Regulations, title 16, section 2520, states that as set  
19 forth in Section 2878 of the Code, incompetence is deemed unprofessional conduct and is a  
20 ground for disciplinary action. As used in Section 2878 "incompetence" means the lack of  
21 possession of and the failure to exercise that degree of learning, skill, care and experience  
22 ordinarily possessed and exercised by responsible licensed vocational nurses.

23           15.     California Code of Regulations, title 16, section 2521, states that for the  
24 purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing  
25 with Section 475) of the Business and Professions Code, a crime or act shall be considered to be  
26 substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a  
27 substantial degree it evidences present or potential unfitness of a licensed vocational nurse to  
28 perform the functions authorized by his license in a manner consistent with the public health,



1 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the  
2 following:

3 ...  
4 (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
5 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2  
6 of the Business and Professions Code.

7 ...  
8 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
9 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business  
10 and Professions Code.

11 16. DRUGS

12 **Fentanyl**, also known as **Duragesic**, is a Schedule II controlled substance  
13 pursuant to the California Health and Safety Code section 11055(c)(8) and a dangerous drug  
14 pursuant to Business and Professions Code section 4022. It is a powerful opiate analgesic for the  
15 treatment of chronic pain.

16 **Dolophine Amidone**, also known as **Methadone**, is a Schedule II controlled  
17 substance pursuant to section 11055(c)(14) of the Health and Safety Code and a dangerous drug  
18 pursuant to Business and Professions Code section 4022. It is opiate analgesic used for pain  
19 relief.

20 **Oxycodone/Acetaminophen**, also referred to as **Percocet and Percodan**, is a  
21 Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(N) and  
22 a dangerous drug pursuant to Business and Professions Code section 4022. It is a semi-synthetic  
23 narcotic analgesic with similar properties as morphine.

24 **Carisoprodol**, also known as **Soma**, is a dangerous drug as defined by section  
25 4022 of the Business and Professions Code. It is a muscle relaxant used for the relief of  
26 musculoskeletal discomfort.

27 **"Hydrocodone"**, also known as **"Vicodin"**, is a Schedule III controlled substance  
28 pursuant to Health and Safety Code section 11056(e) and a dangerous drug pursuant to Business



1 and Professions Code section 4022. Hydrocodone is a semisynthetic narcotic analgesic and  
2 antitussive with multiple actions qualitatively similar to codeine.

### 3 FACTUAL BACKGROUND

4 17. On or about December 9, 1998, Accusation No. 6082 was filed against  
5 respondent for violations of the Business and Professions Code governing unprofessional  
6 conduct in that respondent was convicted by the Court on her plea of guilty to violating Health  
7 and Safety Code section 11173(a) (obtaining controlled substances by fraud, deceit,  
8 misrepresentation or subterfuge). On or about July 26, 2000, respondent signed a stipulated  
9 settlement, indicating that she had read the Stipulation and Agreement in its entirety and agreed  
10 to the Stipulation and Waiver. By signing the stipulated settlement, respondent further agreed to  
11 be bound by the Disciplinary Order and Decision of the Bureau. The Decision and Order was  
12 made effective December 29, 2000.

13 a. Pursuant to the stipulation, inter alia, respondent agreed to completely  
14 abstain from the personal use or possession of controlled substances, except when lawfully  
15 prescribed by a licensed practitioner for a bonafide illness.

16 b. On or about December 19, 2003, a Petition to Revoke Probation, Case No.  
17 6082 was filed with the Bureau against Respondent and the matter subsequently came up for  
18 hearing. On July 16, 2004, the Bureau filed a Decision and Order against respondent. The  
19 Decision extended respondent's probation an additional four (4) years.

20 c. On or about December 15, 2006, the Bureau received an anonymous  
21 complaint alleging narcotics discrepancies following respondent's access to the drug dispensing  
22 system (PYXIS) where she worked at Dominican Hospital Behavioral Health Unit (Dominican  
23 Hospital-BHU). In an investigation of the complaint, the Bureau found that on or about August  
24 18, 2007, respondent was subject to disciplinary action at Dominican Hospital-BHU for failing to  
25 chart the administration of a narcotic medication (PRN) on June 14, 2007, at 1340 hours.  
26 Respondent did not report to the Bureau that she had been disciplined at Dominican Hospital-  
27 BHU.

28 d. During the course of its investigation, the Bureau received information



1 that respondent had been arrested for driving under the influence on or about June 21, 2007. At  
2 the time of her arrest, police officers found controlled substances and dangerous drugs in  
3 respondent's car including, but not limited to, Oxycodone, Percocet, Soma, Fentanyl patches and  
4 one used syringe surrounded by an unknown substance. Respondent submitted to a toxicological  
5 screening conducted at the time of her arrest on June 21, 2007. The screening results showed  
6 that respondent tested positive for Benzodiazepines, Methamphetamine and Opiates.

7 e. On or about August 28, 2007, in *People of the State of California v.*  
8 *Elizabeth Ann Framer*, Santa Cruz County Superior Court, Case No. F15557, respondent was  
9 convicted by her plea of nolo contendere to the misdemeanor violation of Vehicle Code section  
10 23152(a) ( driving under the influence of alcohol or drugs). Respondent was granted a  
11 conditional sentence of 60 months, ordered to serve 2 days in the county jail, given 2 days credit  
12 for time served, assessed payment of \$2,088.00 in fines and fees. The Court further ordered  
13 respondent to comply with general terms as follows: submit to and complete a chemical test if  
14 stopped/or arrested for driving under the influence; not to drive a motor vehicle unless properly  
15 licensed and insured; not to operate a motor vehicle with any amount of alcohol in her blood  
16 system; obey any restriction, suspension, or revocation placed on her license; and enroll in and  
17 complete a First Offender Drinking Driver Program.

18 f. On or about January 25, 2008, in a subsequent interview with the Bureau's  
19 Investigator, respondent admitted that she had been in relapse from late 2006 to 2007. Further,  
20 respondent admitted that during that time period, she did not notify the Bureau of her relapse.  
21 Respondent also admitted that she did not notify the Bureau of discipline she received from  
22 Dominican Hospital-BHU on or about June 14, 2007, for failing to chart the administration and  
23 disposition of medication for a patient.

#### 24 FIRST CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct - Conviction)

26 18. Respondent is subject to disciplinary action under Business and  
27 Professions Code section 2878(a)(1), unprofessional conduct, for the violation of Code section  
28 2878.5(c), conviction of a drug or alcohol related crime, in that on or about August 28, 2007,



1 respondent was convicted by her plea of nolo contendere in Santa Cruz County Superior Court,  
2 Case No. F15557, entitled *People of the State of California v. Elizabeth Ann Farmer*, for the  
3 misdemeanor violation of section 23152(a) of the Vehicle Code for driving under the influence  
4 of drugs and/or alcohol in that respondent was found guilty of driving a vehicle while under the  
5 influence of controlled substances and dangerous drugs and/or alcohol on June 21, 2007, as set  
6 forth in paragraphs 17, 17d and 17e, above.

#### 7 SECOND CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct - Use of Controlled Substance, Dangerous Drug or Alcohol)

9 19. Respondent is subject to disciplinary action under Business and  
10 Professions Code section 2878(a) (1), unprofessional conduct, for the violation of Business and  
11 Professions Code section 2878.5(b), in that she used controlled substances and dangerous drugs,  
12 and/or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or  
13 herself, any other person, or to the public, and to the extent that the use impairs her ability to  
14 conduct with safety to the public the practice authorized by her license, as set forth in paragraph  
15 17, above.

#### 16 THIRD CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct - Substantial Relationship)

18 20. Respondent is subject to disciplinary action under Business and  
19 Professions Code section 2878(a)(1), unprofessional conduct, and title 16, sections 2521(c) and  
20 2521(f) of the California Code of Regulations, in that respondent's violation of Code sections  
21 2878.5(b) and 2878.5(c), as set forth in paragraphs 17, 18 and 19, above, are substantially related  
22 to the qualifications, functions or duties of a licensed vocational nurse.

#### 23 FOURTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct - Gross Negligence)

25 21. Respondent is subject to disciplinary action under sections 2878(a)(1)  
26 unprofessional conduct including gross negligence, as defined in title 16, California Code of  
27 Regulations, section 2519, for the violation of Business and Professions Code section  
28 2878.5(b), in that respondent used controlled substances to an extent or in a manner dangerous



1 or injurious to herself or any other person, as set forth in paragraphs 17, above.

2 FIFTH CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct - Incompetence)

4 22. Respondent is subject to disciplinary action under sections 2878(a)(1)  
5 unprofessional conduct including incompetence, as defined in title 16, California Code of  
6 Regulations, section 2520, for the violation of Business and Professions Code section  
7 2878.5(b), in that respondent used controlled substances to an extent or in a manner dangerous  
8 or injurious to herself or any other person, as set forth in paragraph 17, above.

9 SIXTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Dishonesty)

11 23. Respondent is subject to disciplinary action under section 2878(a)(1),  
12 unprofessional conduct, and 2878.5(j), dishonesty, in that respondent, by her own admission,  
13 failed to notify the Bureau of her relapse from 2006 to 2007, and failed to notify the Bureau of  
14 the discipline she received while employed at Dominican Hospital-BHU, as set forth in  
15 paragraph 17f, above.

16 SEVENTH CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct - Failure to Comply with Disciplinary Order)

18 24. Respondent is subject to disciplinary action under section 2878(d) in that  
19 respondent failed to report her non-compliance with the terms and conditions of her probation  
20 and the Bureau's Decision and Order as set forth in paragraph 17f, above.

21 PETITION TO REVOKE PROBATION

22 25. The allegations of paragraphs 1 through 24 of the Accusation are  
23 incorporated herein by reference and are realleged as if fully set forth herein.

24 26. In a disciplinary action entitled In the Matter of the Petition to Revoke  
25 Probation Against Eli Ann Farmer, Case No. 6082, the Bureau of Vocational Nursing and  
26 Psychiatric Technicians, issued a decision, effective July 16, 2004, in which Respondent's  
27 license was revoked. However the revocation was stayed and respondent was placed on  
28 probation for an additional four (4) years, until July 16, 2008, with certain terms and conditions.



## RELEVANT CONDITIONS OF PROBATION

27. Pursuant to the Decision of the Bureau in Case No. 6082, the following relevant conditions of probation were imposed:

1. **Obey all Laws.** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the Respondent as part of her licensure application process effective July 1, 1996. Respondent shall also submit a recent 2"X2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

2. **Compliance with Probation Program and Quarterly Report Requirements.** Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program. Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

5. **Notification to Employer.** When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify her employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide and all other ancillary



1 technical health care positions.

2 Respondent shall cause each health care employer to submit quarterly reports to  
3 the Bureau. The reports shall be on a form provided by the Board, shall include a performance  
4 evaluation and such other information as may be required by the Board.

5 Respondent shall notify the Board, in writing, within five (5) days of any change  
6 in employment status. Respondent shall notify the Board, in writing, if she is terminated from  
7 any nursing or health care related employment with a full explanation of the circumstances  
8 surrounding the termination.

9 **10. Cost Recovery Requirements.** Respondent shall pay to the Board its  
10 costs of investigation and prosecution in the amount of one thousand eight hundred nine dollars  
11 and fifty cents (\$1,809.50) within thirty (30) days of the effective date of this decision, or by way  
12 of installment payments in a manner satisfactory to the Board.

13 Failure to make payments in accordance with any formal agreement entered into  
14 with the Board or pursuant to any Decision by the Board shall be considered a violation of  
15 probation.

16 The Board may conditionally renew or reinstate, for a maximum of one year, the  
17 license of any respondent who demonstrates financial hardship. The respondent shall enter into a  
18 formal agreement with the Board to reimburse the unpaid costs within that one year period.

19 Except as provided above, the Board shall not renew or reinstate the license of  
20 any respondent who has failed to pay all the costs as directed in a Decision.

21 **13. Chemical Dependency Support/Recovery Groups.** Within five (5) days  
22 of the effective date of the Decision, respondent shall begin attendance at a chemical dependency  
23 support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group).  
24 Verified documentation of attendance shall be submitted by the Respondent with each quarterly  
25 report. Respondent shall continue attendance in such a group for the duration of probation.

26 **14. Abstain from Controlled Substances.** Respondent shall completely  
27 abstain from the personal use or possession of controlled substances, as defined in the California  
28 Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of



1 the Business and Professions Code, except when lawfully prescribed by a licensed practitioner  
2 for a bona fide illness.

3           **15. Submit Biological Fluid Samples.** Respondent shall immediately submit  
4 to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There  
5 will be no confidentiality in test results; positive test results will be immediately reported to the  
6 Board and the Respondent's current employer.

7                           **FIRST CAUSE TO REVOKE PROBATION**

8   (Obey All Laws)

9           **28.** Grounds exist to revoke respondent's probation heretofore entered and  
10 impose the stayed order of revocation in that respondent has failed to comply with the terms and  
11 conditions of probation No 1, requiring her to obey all laws, as follows:

12                   A. On or about June 21, 2007, respondent was arrested for driving  
13 under the influence of Alcohol and/or drugs, a violation of Vehicle Code section 23152(a). On  
14 or about August 28, 2007, respondent was convicted on her plea of nolo contendere to the  
15 misdemeanor violation of Vehicle Code section 23152(a) and sentenced to 60 months probation  
16 with terms and conditions.

17                   B. Respondent failed to comply with condition of probation No. 1  
18 requiring her to obey all statutes and regulations governing her license in that respondent was  
19 disciplined by her employer on or about August 15, 2007, for failing to chart administration of  
20 narcotic medication (PRN) on June 14, 2007, at 1340 hours.

21                   C. Respondent failed to comply with condition of probation No. 1 in  
22 that she did not notify the Bureau in writing, within five (5) days, of her arrest on or about June  
23 21, 2007, and of the discipline she received from her employer on or about August 15, 2007, for  
24 failing to chart the administration of narcotic medication.

25                           **SECOND CAUSE TO REVOKE PROBATION**

26   (Quarterly Report Requirements)

27           **29.** Grounds exist to revoke respondent's probation heretofore entered and  
28 impose the stayed order of revocation in that respondent has failed to comply with the terms and



conditions of probation No. 2, requiring her compliance with the Probation Program and Quarterly Report requirements, as follows:

A. Respondent failed to comply with Probation Condition 2 in that she failed to report the August 2007 disciplinary action by her employer on her July - September 2007 Quarterly Report. Respondent signed the Quarterly Report under penalty of perjury on September 27, 2007.

B. Respondent failed to follow instructions to document her compliance with condition No. 2 in that she failed to properly report prescription medications on her Quarterly Report forms. Instructions on the forms require that for each prescription medication taken, she must state the name of the medication, the dosage, when it was prescribed and the reason it was prescribed.

C. Respondent failed to notify the Bureau that she was prescribed or was taking Oxycontin, Soma, Percocet, Methadone or Duragesic/Fentanyl Patches until she submitted her April - June 2007 Quarterly Report on July 6, 2007. The April - June Quarterly Report did not include information regarding the dosage, date and reason for the prescription.

D. Respondent failed to notify the Bureau that she had been prescribed and took a variety of medications during the reporting time periods for January-March 2006, July-September 2006, October-December 2006. Every one of these reports asked the respondent if she currently took prescription medication. In each instance, respondent stated "no" and signed the report under penalty of perjury.

E. Respondent failed to submit Quarterly Report forms certifying and documenting her compliance with conditions of probation by scheduled due dates as follows:

<u>Reporting Period</u>	<u>Due Date</u>	<u>Date Received</u>	<u>Days Delinquent</u>
October-December 2004	Jan. 7, 2005	Jan. 12, 2005	5
January-March 2005	April 7, 2005	April 14, 2005	7
April-June 2005	July 7, 2005	July 21, 2005	14
July-September 2005	Oct. 7, 2005	Oct. 18, 2005	11
April-June 2006	July 7, 2006	July 14, 2006	7*



1	October-December 2006	Jan. 7, 2007	Jan. 20, 2007	13*
2	January-March 2007	April 7, 2007	April 17, 2007	10*
3	January-March 2008	April 7, 2008	April 9, 2008	2*

4 \* Respondent notified the Bureau by telephone call or by notes on the forms explaining that the  
5 reports were late due to unavailability of supervisor to sign the report or due to illness or a  
6 combination of both.

### 7 THIRD CAUSE TO REVOKE PROBATION

8 (Notification to Employer)

9 30. Grounds exist to revoke respondent's probation heretofore entered and  
10 impose the stayed order of revocation in that respondent has failed to comply with the terms and  
11 conditions of probation No. 5, requiring her to submit Work Performance Evaluation Forms  
12 consistent with scheduled due dates, as follows:

13	<u>Reporting Period</u>	<u>Due Date</u>	<u>Date Received</u>	<u>Days Delinquent</u>
14	October-December 2004	Jan. 7, 2005	Jan. 12, 2005	5
15	January-March 2005	April 7, 2005	April 14, 2005	7
16	April-June 2005	July 7, 2005	July 21, 2005	14
17	July-September 2005	Oct. 7, 2005	Oct. 18, 2005	11
18	April-June 2006	July 7, 2006	July 14, 2006	7*
19	October-December 2006	Jan. 7, 2007	Jan. 20, 2007	13*
20	January-March 2007	April 7, 2007	April 17, 2007	10*
21	January-March 2008	April 7, 2008	April 9, 2008	2*

22 \* Respondent notified the Bureau by telephone call or by notes on the forms explaining that the  
23 reports were late due to unavailability of supervisor to sign the report or due to illness or a  
24 combination of both.

### 25 FOURTH CAUSE TO REVOKE PROBATION

26 (Cost Recovery)

27 31. Grounds exist to revoke respondent's probation heretofore entered and  
28 impose the stayed order of revocation in that respondent failed to comply with condition of



1 probation No. 10 requiring her to reimburse the Bureau's cost recovery according to the payment  
2 schedule she agreed to on or about August 26, 2004. According to that agreement, respondent  
3 was to start making monthly payments of \$72.38 beginning in September 2004. Respondent  
4 failed to make any payments to the Bureau until November 2006. From about November 2006  
5 through November 2007, respondent made monthly payments totaling \$1,109.50. On March 10,  
6 2008, respondent made a payment of \$100.00. The Bureau has not received further payment  
7 from respondent since March 2008. Respondent owes a balance of \$600.00 due for costs  
8 reimbursement.

9 **FIFTH CAUSE TO REVOKE PROBATION**

10 (Chemical Dependency Support/Recovery Groups)

11 32. Grounds exist to revoke respondent's probation heretofore entered and  
12 impose the stayed order of revocation in that respondent has failed to comply with the terms and  
13 conditions of probation as follows:

14 A. Respondent failed to comply with condition No. 13 in that she failed to  
15 submit Attendance Verification forms documenting her attendance at support groups meetings in  
16 the following instances:

<u>Reporting Period</u>	<u>Due Date</u>	<u>Date Received</u>	<u>Days Delinquent</u>
October-December 2004	Jan. 7, 2005	Jan. 12, 2005	5
January-March 2005	April 7, 2005	April 14, 2005	7 (reported form missing)
April-June 2005	July 7, 2005		None received
July-September 2005	Oct. 7, 2005		None received
October-December 2005	Jan. 7, 2006	Jan. 5, 2006	Letter in lieu of form
January-March 2006	April 7, 2006		None received
April-June 2006	July 7, 2007		None received
July-September 2006	Oct. 7, 2006		Letter in lieu of form
October-December 2006	Jan. 7, 2007	Jan. 20, 2007	13 - letter in lieu of form
January-March 2007	April 7, 2007	April 17, 2007	10 - letter in lieu of form
April-June 2007	July 7, 2007	July 9, 2007	2 - letter in lieu of form



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Respondent failed to submit to biological testing as required by the Bureau and failed to include information on those facilities she contacted as requested by the Bureau.

### DISCIPLINE CONSIDERATIONS

35. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about December 9, 1998, in a prior disciplinary action entitled In the Matter of the Accusation Against Elizabeth Ann Barnard aka Elizabeth Ann Farmer aka Elizabeth Ann Farmer-Barnard before the Bureau of Vocational Nursing and Psychiatric Technicians, in Case No. 6082, Respondent's license was disciplined for unprofessional conduct for the violation of Business and Professions Code section 2878.5(e) for falsifying, making grossly incorrect, grossly inconsistent or unintelligible entries in hospital and patient records pertaining to narcotics or dangerous drugs; convicted of a crime in a Santa Cruz County Municipal/Superior Court Case, No. S7-08861, entitled *People v. Elizabeth Ann Farmer*; and for the violation of Code section 2878(a) as defined in Code section 2878.5(a) for obtaining Morphine Sulfate and Vicodin by fraud, deceit, misrepresentation, in violation of Health and Safety Code section 11173(a). In a stipulated settlement agreement, respondent's Vocational Nurse License, No. 143399, was revoked, revocation stayed, and placed on probation for three (3) years with terms and conditions. That decision is now final and is incorporated by reference as if fully set forth.

### PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking the probation that was granted by the Bureau of Vocational Nursing and Psychiatric Technicians in Case No. 6082 and imposing the disciplinary order that was stayed thereby revoking Vocational Nurse License No. VN 143399 issued to Eli Ann Farmer;
2. Revoking Vocational Nurse License No. VN 143399, issued to Eli Ann Farmer;
3. Ordering Eli Ann Farmer to pay the Bureau of Vocational Nursing and



1 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
2 pursuant to Business and Professions Code section 125.3;

3 4. Taking such other and further action as deemed necessary and proper.  
4

5 DATED: July 15, 2008.  
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TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

Bureau of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

Complainant

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**Exhibit A**

**Decision and Order**

**Bureau of Vocational Nursing and Psychiatric Technicians Case No. 6082**



BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

Case No. 6082

ELI ANN FARMER  
Aka ELIZABETH ANN BARNARD  
Aka ELIZABETH ANN FARMER  
Aka ELIZABETH ANN FARMER-  
BARNARD  
2580 Gary Drive  
Soquel, CA 95073

OAH No. N2004010513

Vocational Nurse License  
Number VN 143399

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on July 16, 2004.

IT IS SO ORDERED this 16<sup>th</sup> day of June, 2004.

*Sister Marie de Porres Taylor*  
Sister Marie de Porres Taylor  
President



BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

ELI ANN FARMER  
Aka ELIZABETH ANN BARNARD  
Aka ELIZABETH ANN FARMER  
Aka ELIZABETH ANN FARMER-  
BARNARD  
777 Seale Avenue  
Palo Alto, CA 94303

Vocational Nurse License No. VN 143399

Respondent.

Case No. 6082

OAH No. N2004010513

**PROPOSED DECISION**

On February 25, 2004, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California ("OAH"), heard this matter.

David Land, Legal Analyst, with the assistance of Frank H. Pacoe, Supervising Deputy Attorney General, represented Complainant Teresa Bello-Jones.

Eli Ann Farmer, also known as Elizabeth Ann Barnard, also known as Elizabeth Ann Farmer and also known as Elizabeth Ann Farmer-Barnard, appeared at the hearing of this matter, but she was not otherwise represented.

On February 25, 2004, the parties submitted the matter and the record closed.

*Amendments to Petition*

Under Government Code section 11507, Complainant amended the Petition to Revoke Probation as follows:

At page two, strike lines 12 through 25 and thereby delete the "First Cause to Revoke Probation."



At page two, beginning at line 12, add the following:

"5. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

At page two, on line 26, strike the word "Second" so that the caption reads: "Cause to Revoke Probation." At page two, on line 28, strike the numeral "7," and replace the same with the numeral "6."

At page three, on line 5, strike the numeral "8," and replace the same with the numeral "7."

At page three, strike lines 10 through 28 and thereby delete the "Third Cause to Revoke Probation" and the "Fourth Cause to Revoke Probation."

At page four, strike lines 1 through 28 to thereby delete the "Fifth Cause to Revoke Probation" and the "Sixth Cause to Revoke Probation."

At page five strike lines 1 through 21 and thereby delete the "Seventh Cause to Revoke Probation."

At page six, on line 5, strike the number "3," and replace the same with numeral "4."

At page six, on about line 12, add the following:

"3. Ordering Elizabeth Ann Barnard, aka Elizabeth Ann Farmer, aka Elizabeth Ann Farmer-Barnard, aka Eli Ann Farmer to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;"

#### FACTUAL FINDINGS

1. On December 19, 2003, in her official capacity, Complainant Teresa Bello-Jones, JD, MSN, RN, the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California ("Complainant"), made and issued, under the signature of Deputy Attorney General Hannah Hirsch Rose, the Petition to Revoke Probation).



### *License Information*

2. On February 15, 1989, the Board of Vocational Nursing and Psychiatric Technicians ("Board") issued Vocational Nurse's License No. VN-143399 to Eli Ann Farmer ("Respondent").

The license is active and renewed through June 30, 2004.

### *Past Disciplinary Action*

3. Effective on December 29, 2000, the Board issued a Decision in Case number 6082, that was captioned "In the Matter of the Accusation Against Elizabeth Ann Barnard, also known as Elizabeth Ann Farmer and also known as Elizabeth Ann Farmer-Barnard." The Decision revoked Respondent's Vocational Nurse license. However, the Decision stayed revocation and placed Respondent's license on probation for a period of three (3) years under specific terms and conditions. (A copy of the Decision and "Stipulation in Settlement, Decision and Order" is affixed hereto as Attachment "A.")

4. The period of time for probation for Respondent's Vocational Nurse license had been scheduled to expire on or about December 28, 2003.

5. The Decision in case number 6082 incorporated a term of probation, which was numbered term number two, that specified in pertinent part: "Respondent shall completely abstain from the personal use or possession of controlled substances ... except when lawfully prescribed by a licensed practitioner for a bona fide illness."

### *Violation of Terms and Conditions of Probation*

6. Ms Barbara Miller, a Department Enforcement Analyst ("Ms Miller"), appeared at the hearing of this matter to provide compelling and credible evidence.

Ms Miller, upon review of the Board's disciplinary file that pertains to Respondent, determined that on or about June 27, 2003, Respondent admitted to the Board's staff that she had checked into a rehabilitation center for treatment of substance abuse.

The Board's disciplinary file, which pertains to Respondent shows that on January 25, 2001, Respondent attended an initial meeting of the Board regarding the terms and conditions of probation upon which she had agreed to enter by way of a Decision and Order made effective December 29, 2000. Under term two of the Order in the stipulated settlement agreement signed by Respondent on July 26, 2000, Respondent agreed to "completely abstain from the personal use or possession of controlled substances..., except when lawfully prescribed by a licensed practitioner for a bona fide illness."



7. The Board records contain a letter, dated September 20, 2003, by Respondent. The letter, sets out, in part: "On June 14, 2003, I checked myself into the Camp Recovery Center .... I remained there until July 7, 2003. After my stay at The Camp, I entered a clean and sober house for [two] months...."

The letter reflects Respondent's admission that during the three year period of probation beginning in December 2000 she had not completely abstained from the personal use of controlled or illegal substances.

8. On January 13, 2004, the Board received Respondent's Quarterly Written Report for the period October 1, 2003, through December 31, 2003.

Respondent's Quarterly Written Report indicates a sobriety date from use of "drugs" as June 15, 2003.

The Quarterly Written Report reflects Respondent's admission that during the three year period of probation beginning in December 2000 she had not completely abstained from the personal use of controlled or illegal substances.

9. On January 21, 2004, Respondent wrote to the Board a letter in which she made an admission that she had a period of being "clean and sober" for a period of "over 7 months."

The letter, dated January 21, 2004, reflects Respondent's admission that during the three year period of probation beginning in December 2000 she had not completely abstained from the personal use of controlled or illegal substances.

#### *Matters in Extenuation*

10. Respondent provides compelling evidence regarding the circumstances of her relapse into drug abuse.

On April 18, 2003, Respondent claims that an automobile collision injured her to such a degree that she required medical attention over the course of months. During the course of treatment with physicians with Center for the Healing Process, she received a prescription for Lortabs, which is a controlled substances. After she recovered from the injuries related to the automobile collision, Respondent found that she might have developed a dependency for the medication.

On June 14, 2003, on her own volition, Respondent enrolled in the drug counseling and rehabilitation program of "The Camp Recovery Center," which is located in Santa Cruz. On July 7, 2003, she graduated from the Camp, but then she voluntarily entered a "clean and sober house," where she lived for two months.



Also, in June 2003, Respondent began counseling for her chemical dependency with an organization called "We Care For Chemically Dependent Health Professionals."

#### *Matters in Aggravation*

11. Over a period of twenty years, Respondent has been enrolled in about three distinct recovery programs for treatment of her drug dependence disposition.

The first drug treatment program attempted by Respondent occurred in about 1983. Then, in about 1997, Respondent enrolled in the Betty Ford Clinic. The third known program was The Camp in which Respondent enrolled in June 2003.

#### *Witnesses in Mitigation*

12. Ms Sharon L. Lutman, RN, LMFT, appeared at the hearing of this matter.

Ms Lutman is a group facilitator for We Care For Chemically Dependent Health Professionals ("We Care"). We Care provides support group facilities for drug dependent health care professionals that meets weekly in small gatherings.

In June 2003 Ms Lutman met Respondent at a meeting of We Care. Respondent entered the support group setting while in treatment. Through regular attendance at weekly meetings, Respondent showed a commitment to overcoming her drug dependence problem.

Ms Lutman has become impressed with Respondent's character and devotion to recovery. Among other things, Ms Lutman found commendable Respondent's resolution to not return to work as a health care professional until she had attained a solid stage on her path to recovery for drug abuse. Ms Lutman has determined that Respondent has learned to acquire different coping skills to deal with life stressors that might prompt her to resort to drugs. Respondent has demonstrated a recognition of triggering mechanisms for relapse.

Ms Lutman opines that Respondent has been honest with her employer as to her status on probation. Ms Lutman relays her considered belief that Respondent can work as a health care professional so long as she remains on probationary status for a few years.

13. Mr. Shawn Smith appeared at the hearing to provide support for Respondent progression towards recovery.

Mr. Smith is now a chemical dependency counselor at the Camp Recovery Center in Santa Cruz.

Mr. Smith has known Respondent since June 2003. They met when Mr. Smith performed volunteer work at the Camp Recovery Center. Mr. Smith has noted Respondent's



great efforts in confronting her drug dependence inclination. He opines that Respondent has reacted well to a sober living environment offered her since her enrollment in June 2003 in the Camp's program.

Mr. Smith proclaims that Respondent is an asset to the 12 step community.

14. Clifford M. Farmer, Senior, appeared at the hearing to offer poignant evidence.

Mr. Clifford Farmer is Respondent's father, who lives in Kennebunkport, Maine. He traveled to the site of the hearing in Oakland to offer support to Respondent.

Mr. Clifford Farmer views Respondent as a beautifully spirited individual who has worked hard to attain her professional status.

Mr. Clifford Farmer represents that he has been "clean and sober" for twenty years from his past dependencies upon intoxicating agents. But, he relays that Respondent's recent immersion in a treatment and recovery program show her to be a devoted adherent to positive behavior modification from destructive practices of drug abuse.

15. Mr. Clifford M. Farmer, Junior ("Junior Mr. Farmer") appeared on behalf of Respondent.

Junior Mr. Farmer is Respondent's older brother, who lives in Marina, Monterey County, California.

Junior Mr. Farmer has some knowledge as to dependence on intoxicating substances as he has a sobriety date of September 1986.

Junior Mr. Farmer closely observed Respondent's recent efforts in drug recovery. While she was in the residential program at The Camp, Junior Mr. Farmer visited her.

Although he is aware that Respondent has been involved in other efforts to overcome her dependence on drugs, since June 2003, Junior Mr. Farmer has noticed that Respondent is more humble and receptive to recovery. He believes that Respondent's recent enrollment in The Camp was a tremendous benefit to her. The difficult and Spartan existence fostered new realizations upon Respondent's outlook.

Junior Mr. Farmer believes Respondent possesses valuable assets which included her ability to communicate with people, especially children.



### *Matters in Rehabilitation*

16. Respondent is candid with regard to the instances of neglect in fulfilling the terms of probation during 2003. Respondent acknowledges that after her automobile accident in April 2003, she was not fully attentive to her duties and obligations to the Board. Respondent affirms that she did not dispatch to the Board a quarterly report regarding her condition.

17. Respondent declares that she has been absolutely clean and sober a period of eight months.

Currently, Respondent is devoted to her weekly meetings with the health care support group facilities of "We Care." She represents that she attends eight to twelve meetings of the Twelve Step program of Narcotics Anonymous.

18. On January 14, 2004, after she had attained a solid level in her recovery, Respondent secured a "per diem" position at Dominican Hospital in Santa Cruz. As of February 22, 2004, Respondent gained a full term position within the Behavioral Health unit of Dominican Hospital. Currently, Respondent works eight shifts every two weeks for a total of 64 hours every two weeks.

Respondent's duties involve working with individuals with mental health problems, as well as some individuals who have both substance abuse problems as well as mental illness. But, the facility in which she works does not involve her being in close proximity to controlled substances.

Respondent asserts that her superior is well aware of the probationary status of her vocational nurse license. Respondent also indicates that her employer is aware of her drug abuse past.

19. Respondent has changed her living environment to a near drug free setting. In March 2003, Respondent moved to Palo Alto, California, where she maintains a clear and sober home life.

20. Respondent claims that she has the support of family members and friends so as to maintain her sobriety and efforts to full rehabilitation from drug abuse.

### *Cost Recovery*

21. Complainant incurred costs of investigation and prosecution of the Petition to Revoke against Respondent as follows:



Attorney General Costs

By Deputy Attorney General

Fiscal year	No. of Hours	Hourly Rate	Total
2003-04	1.25	\$112	\$140.00
2003-04	31.50	\$53	\$1,669.50

TOTAL COSTS INCURRED: \$1,809.50

Respondent makes no compelling and sustainable objection that Complainant's certification of costs is unreasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2876 provides, in part, that the Board of Vocational Nursing and Psychiatric Technicians ("Board") the holder of any license who has been heard by the Board by "... (b) placing [her] upon probation [or] taking such other action in relation to disciplining [her] as the [Board] in its discretion may deem proper.... "

2. By reason of Factual Findings 5, 6, 7, 8, and 9, Respondent breached, violated and failed to comply with terms of a "Stipulation in Settlement, Decision and Order," and resultant Decision. Hence, cause exists to revoke probation under the Board's Decision in December 2000.

3. Respondent's efforts to overcome her dependence on controlled substances or illegal drugs has been a struggle for her. But, she believes that when she entered the settlement agreement in December 2000 that she was committed to ending her abuse of drugs. But, in April 2003, an automobile accident resulted in injuries that required that she take certain drugs to treat her physical ailments. However, she became dependent upon the drugs. Yet, she voluntarily enrolled in the difficult program of The Camp and then lived in a drug free house for about two months. Respondent compelling points out that she is firmly devoted to recovery from her past drug abuse habits. She is keenly interested in maintaining her position within the health care community. Respondent affirms that a further period of probation will show that she is fully compliant with the Board's requirement that she remain free from drug abuse.

4. Business and Professions Code section 125.3 prescribes, in part: in any order issued in resolution of a disciplinary proceeding before any board with the [Department of Consumer Affairs] ... the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the Chiropractic Initiative Act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.... [¶] (b)



A certified copy of the actual costs, or a good faith estimate of costs ..., signed by ... [the board's] designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution in the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General...."

The reasonable costs of investigation and prosecution as set forth in Finding 21 amounts to \$1,809.50.

The total costs are not unreasonable, especially because the value of the time for both the legal analyst and supervising deputy attorney general who attended to the hearing is not included in the certificate of costs of the necessary prosecution of this matter.

### **ORDER**

License No. VN 143399 issued to Respondent Eli Ann Farmer, also known as Elizabeth Ann Barnard, also known as Elizabeth Ann Farmer and also known as Elizabeth Ann Farmer-Barnard is revoked. However, the revocation is stayed and Respondent's license is placed into a further period of probation for an additional four (4) year term, which shall commence on the effective date of the Decision herein. Such probation shall extend to Respondent's license so long as she faithfully complies with the following terms and conditions of probation.

#### **1. OBEY ALL LAWS**

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the Respondent as part of her licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

#### **2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS**

Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.



Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of her new address and any change in her work and/or home telephone numbers.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

5. NOTIFICATION TO EMPLOYER

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated



from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

#### 6. INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board, or its designated representatives.

#### 7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

During probation, the Respondent shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

#### 8. SUPERVISION REQUIREMENTS

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

#### 9. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.



## 10. COST RECOVERY REQUIREMENTS

Respondent shall pay to the board its costs of investigation and prosecution in the amount of one thousand eight hundred nine dollars and fifty cents (\$1,809.50) within thirty (30) days of the effective date of this decision, or by way of installment payments in a manner satisfactory to the board.

Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one year, the license of any respondent who demonstrates financial hardship. The Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one year period.

Except as provided above, the Board shall not renew or reinstate the license of any Respondent who has failed to pay all the costs as directed in a Decision.

## 11. VIOLATION OF PROBATION

If the Respondent violates the conditions of her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the Respondent's license will be fully restored.

## 12. REHABILITATION PROGRAM

Within thirty (30) days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in



chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by the Respondent.

13. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

14. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

15. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the Respondent's current employer.

16. TAKE AND PASS LICENSURE EXAMINATION

Respondent shall take and pass the licensure exam currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees.

As a condition for reinstatement of a license, Respondent shall take and pass the licensure exam currently required of new applicants to resuming practice. Respondent shall pay the established examination and licensing fees.

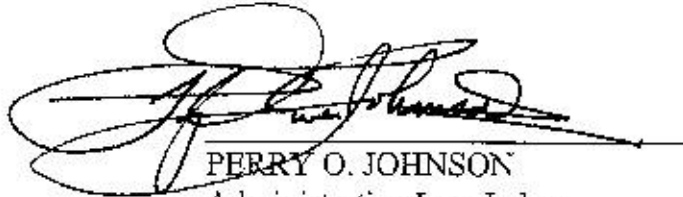
All standard terms or any other terms of probation shall be tolled until the Respondent has successfully passed the licensure examination and notice of licensure has been mailed to the Respondent by the Board. The Respondent's failure to pass the licensure examination within two (2) years shall be considered a violation of her probationary status.



17. RESTRICTIONS ON LICENSED PRACTICE

Respondent shall practice only with a specified client population, in a specified practice setting, or engage in limited medical procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Board.

DATED: March 11, 2004



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings



**Exhibit A**

**Decision and Order**

**Board of Vocational Nursing and Psychiatric Technicians Case No. 6082**



1 DANIEL E. LUNGREN, Attorney General  
of the State of California

2 RICHARD D. GARSKE

[State Bar No. 50569]

3 Deputy Attorney General

110 West A Street, Suite 1100

4 San Diego, California 92101

Post Office Box 85266

5 San Diego, California 92186-5266

Telephone: (619) 645-2075

6 Facsimile: (619) 645-2061

7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF VOCATIONAL NURSING AND**  
10 **PSYCHIATRIC TECHNICIANS**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

CASE NO. 6082

14 ELIZABETH ANN BARNARD  
aka ELIZABETH ANN FARMER  
15 aka ELIZABETH ANN FARMER-  
BARNARD  
777 Seale Avenue  
Palo Alto, CA 94303

OAH NO.

16 **STIPULATION IN**  
17 **SETTLEMENT, DECISION**  
18 **AND ORDER**

Vocational Nurse License No. VN 143399

Respondent.

19 In the interest of a prompt and speedy settlement of this matter, consistent with  
20 the public interest and the responsibility of the Board of Vocational Nursing and Psychiatric  
21 Technicians, Department of Consumer Affairs (hereinafter the "Board"), the parties submit this  
22 Stipulation and Decision to the Board for its approval and adoption as the final disposition of  
23 Accusation No. 6082.

24 The parties stipulate the following is true:

25 1. Accusation No. 6082 is currently pending against Elizabeth Ann  
26 Barnard, aka Elizabeth Ann Farmer, aka Elizabeth Ann Farmer-Barnard (hereinafter  
27 "respondent"), before the Board. The Accusation, together with all other statutorily required



1 documents, was duly served on the respondent on or about December 9, 1998 and respondent  
2 filed her Notice of Defense on or about December 21, 1998. A copy of Accusation No. 6082 is  
3 attached as Exhibit "A" and incorporated by reference as if fully set forth herein.

4           2. At all times relevant herein, respondent has been licensed by the Board  
5 as indicated in Exhibit "A."

6           3. Respondent is representing herself in this matter.

7           4. Respondent understands the nature of the charges alleged in the  
8 Accusation as constituting causes for imposing discipline upon her license. Respondent is fully  
9 aware of her right to a hearing on the charges and allegations contained in said Accusation, her  
10 right to reconsideration, appeal and any and all other rights which may be accorded her  
11 pursuant to the California Business and Professions Code and Government Code and with this  
12 in mind, freely and voluntarily waives such rights.

13           5. Respondent admits the truth of each and every allegation of Accusation  
14 No. 6082 and agrees that she has thereby subjected her license to discipline.

15           Admissions made by respondent herein are for purposes of this proceeding, for  
16 any other disciplinary proceedings by the Board, and for any petition for reinstatement,  
17 reduction of penalty, or application for relicensure, and shall have no force or effect in any  
18 other case or proceeding.

19           6. It is understood by respondent that, in deciding whether to adopt this  
20 Stipulation, the Board may receive oral and written presentations from, and make inquiries of,  
21 its staff, and the Attorney General's office. Communications pursuant to this paragraph shall  
22 not disqualify the Board or other persons from future participation in this or any other matter  
23 affecting respondent. In the event this settlement is not adopted by the Board, the stipulation  
24 will not become effective and may not be used for any purpose, except for this paragraph,  
25 which shall remain in effect.

26           7. Respondent agrees to the Board's imposition of penalty as set forth in the  
27 order below.



8. The parties agree that facsimile copies of this Stipulation, including facsimile signatures of the parties, may be used in lieu of original documents and signatures. The facsimile copies will have the same force and effect as originals.

9. In consideration of the foregoing admissions and findings, the parties agree that the Board may, without further notice of formal proceeding, issue and enter an order as follows:

## ORDER

A. IT IS HEREBY ORDERED that Vocational Nurse License No. VN 143399, issued to Elizabeth Ann Barnard, is revoked. Said revocation, however, is stayed, and respondent is placed on probation for three (3) years on the following terms and conditions:

1. ATTEND CHEMICAL DEPENDENCY SUPPORT/  
RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Documentation of attendance shall be submitted by the respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

## 2. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4211 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bonafide illness.

### 3 ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

/ / /

/ / /



1                   4.     **SUBMIT BIOLOGICAL FLUID SAMPLES**

2                   Respondent shall immediately submit to biological fluid testing, at  
3 respondent's cost, upon request by the Board or its designee. There will be no  
4 confidentiality in test results; positive test results will be immediately reported to the  
5 Board and the respondent's current employer.

6                   5.     **SUPERVISION**

7                   The Board shall be informed and approve of the type of  
8 supervision provided while the respondent is functioning as a Licensed Vocational  
9 Nurse or Psychiatric Technician.

10                  Respondent may not function as a charge nurse or supervising  
11 psychiatric technician during the period of probation or until approved by the Board.

12                  6.     **RECOVERY**

13                  Respondent shall reimburse the Board for the cost of investigation and  
14 enforcement of the case in the amount of Four Thousand Three Hundred Twelve Dollars  
15 (\$4,312.00) payable in thirty (30) consecutive monthly installments of One Hundred  
16 Forty Dollars (\$140.00) with the one final payment of One Hundred Twelve Dollars  
17 (\$112.00). The first such installment shall be due thirty (30) days after the effective  
18 date of this Decision.

19                  7.     **OBEY ALL LAWS**

20                  Respondent shall obey all federal, state and local laws, including all  
21 statutes and regulations governing the license.

22                  Further, respondent shall, within five (5) days of any arrest, submit to the  
23 Board in writing a full and detailed account of such arrest.

24                  8.     **COMPLY WITH PROBATION PROGRAM**

25                  Respondent shall fully comply with the probation program established by  
26 the Board and shall cooperate with the representatives of the Board.

27     ///



1                   9.     **ADDRESS CHANGE**

2                   Respondent, within five (5) days of a change of residence or mailing  
3 address, shall notify the Board's Enforcement Unit in writing of the new address.

4                   10.    **OUT-OF-STATE RESIDENCY**

5                   Respondent is required to notify the Board immediately in writing if she  
6 leaves California to reside or practice in another state.

7                   Respondent shall notify the Board immediately upon return to  
8 California.

9                   The period of probation shall not run during the time respondent is  
10 residing or practicing outside California.

11                  11.    **SUBMIT QUARTERLY REPORTS**

12                  Respondent shall submit quarterly reports under penalty of perjury, in a  
13 form required by the Board. The reports shall certify and document compliance with all  
14 the conditions of probation.

15                  12.    **NOTIFY EMPLOYER**

16                  When currently employed or applying for employment in any capacity in  
17 any health care profession, respondent shall notify her employer of the probationary  
18 status of respondent's license. This notification to the respondent's current health care  
19 employer shall occur no later than the effective date of the Decision. The respondent  
20 shall notify any prospective health care employer of her probationary status with the  
21 Board prior to accepting such employment. This notification shall be by providing the  
22 employer or prospective employer with a copy of the Board's Accusation and  
23 Disciplinary Order.

24                  The Health Care Profession includes, but is not limited to: Licensed  
25 Vocational Nurse, Registered Nurse, Medical Technical Assistant, Paramedic,  
26 Emergency Medical Technician, Certified Nursing Assistant and Home Health Aide.

27                  Respondent shall cause each health care employer to submit quarterly



1 reports to the Board. The reports shall be on a form provided by the Board, shall  
2 include a performance evaluation and such other information as may be required by the  
3 Board.

4 **Respondent shall inform the Board of any change in employment**  
5 **status, in writing, within ten (10) days of such change**

6 **13. INTERVIEWS WITH BOARD REPRESENTATIVE**

7 Respondent shall appear in person for interviews with the Board, or its  
8 designee, upon request at various intervals and with reasonable notice. An initial  
9 probation visit will be required within sixty (60) days of the effective date of the  
10 Decision. The purpose is to introduce respondent to the Board's representative(s) and to  
11 familiarize respondent with specific probation conditions and requirements. Additional  
12 meetings will be scheduled as required.

13 **14. EMPLOYMENT LIMITATIONS**

14 While on probation, respondent may not work for a nurses' registry, as a  
15 faculty member in an accredited or approved school of nursing, or as an instructor in a  
16 Board approved continuing education course.

17 **15. EDUCATIONAL COURSE**

18 Respondent shall take and successfully complete course work  
19 substantially related to the violation. The Board shall within sixty (60) days of the  
20 effective date of the Decision, advise the respondent of the course content and number  
21 of contact hours required. Within thirty (30) days thereafter, respondent shall submit a  
22 plan to comply with this requirement. The Board shall approve such plan prior to  
23 enrollment in any course study.

24 Respondent shall successfully complete the required remedial education  
25 no later than the end of the first year of probation. Upon successful completion of the  
26 course, respondent shall cause the instructor to furnish proof to the Board immediately.

27 ///



1                   16.    **FUNCTION IN LICENSED CAPACITY**

2                   During probation, respondent shall work in licensed capacity in the State  
3 of California. This practice shall consist of no less than six (6) continuous months and  
4 of no less than twenty (20) hours per week.

5                   17.    **MAINTAIN VALID LICENSE**

6                   Respondent shall, at all times while on probation, maintain an active  
7 current license with the Board, including any period during which suspension or  
8 probation is tolled.

9                   Should respondent's license, by operation of law or otherwise, expire,  
10 upon renewal of reinstatement respondent's license shall be subject to any and all terms  
11 of this probation not previously satisfied.

12                  18.    **VIOLATION OF PROBATION**

13                  If respondent violates probation in any respect, the Board may seek to  
14 revoke probation and carry out the disciplinary order that was stayed. The respondent  
15 shall receive prior notice and the opportunity to be heard. If an Accusation or Petition  
16 to Vacate Stay is filed against respondent during the probation, the Board shall have  
17 continuing jurisdiction and the period of probation shall be extended until the matter is  
18 final.

19                  19.    **COMPLETION OF PROBATION**

20                  Respondent's license will be fully restored upon successful completion of  
21 probation.

22                  20.    **COMPLETION OF FINGERPRINT CARDS**

23                  Respondent is required to complete and submit two fingerprint cards and  
24 the applicable processing fee of \$56.00 for the Department of Justice (DOJ) and Federal  
25 Bureau of Investigation records check within thirty (30) days of the effective date of this  
26 Decision. Instructions for completing the fingerprint cards and submission of the cards  
27

///



1 and payment will be provided to respondent by the Board upon notification to  
2 respondent whether or not this settlement has been adopted by the Board.

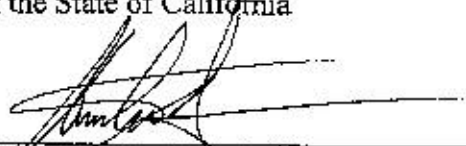
3 B. The allegations contained in Accusation No. 6082 are  
4 admitted.

5  
6 C. The within Stipulation shall be subject to the approval of the Board. If  
7 the Board fails to adopt the Stipulation as its Order, the Stipulation shall be of no force or effect  
8 by either party.

9  
10 I concur in the Stipulation and Order.

11  
12 DATED: 9/5/00

13  
14 BILL LOCKYER, Attorney General  
15 of the State of California

16   
17 RICHARD D. GARSKE  
18 Deputy Attorney General

19 Attorneys for Complainant  
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DATED: *W. J. [Signature]* 7/26/00

Respondent







1 DANIEL E. LUNGREN, Attorney General  
2 of the State of California  
3 RICHARD D. GARSKE  
4 State Bar No. 50569  
5 Deputy Attorney General  
6 110 West A Street, Suite 1100  
7 P. O. Box 85266  
8 San Diego, California 92186-5266  
9 Telephone: (619) 645-2075  
10 FAX: (619) 645-2061

Attorneys for Complainant

BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

11 In the Matter of the Accusation  
12 Against:

NO6082

13 ELIZABETH ANN BARNARD  
14 aka ELIZABETH ANN FARMER  
15 aka ELIZABETH ANN FARMER-BARNARD  
16 3181 FRANELA DRIVE  
17 SAN JOSE, CALIFORNIA 95124  
18 Vocational Nurse License No. VN 143399

ACCUSATION

Respondent.

18 Teresa Bello-Jones, J.D., M.S., R.N., for causes for  
19 discipline, alleges:

20  
21 1. Complainant Teresa Bello-Jones, J.D., M.S., R.N.,  
22 makes and files this accusation in her official capacity as  
23 Executive Officer, Board of Vocational Nursing and Psychiatric  
24 Technicians, Department of Consumer Affairs.

25 2. On February 15, 1989, the Board of Vocational  
26 Nursing and Psychiatric Technicians (formerly Board of Vocational  
27 Nurse and Psychiatric Technician Examiners) issued Vocational  
28 Nurse License Number VN 143399 to Elizabeth Ann Barnard, also



1 known as Elizabeth Ann Farmer and Elizabeth Ann Farmer-Barnard  
2 ("respondent"). The license was in full force and effect at all  
3 times pertinent herein and will expire on June 30, 2000, unless  
4 renewed.

5           3. Under Business and Professions Code section 2875,  
6 the Board of Vocational Nursing and Psychiatric Technicians may  
7 discipline the holder of a vocational nurse license for any  
8 reason provided in Article 3 of the Vocational Nursing Practice  
9 Act.

10           Under Business and Professions Code section 118(b), the  
11 expiration of a license shall not deprive the Board of Vocational  
12 Nursing and Psychiatric Technicians of jurisdiction to proceed  
13 with a disciplinary action during the period within which the  
14 license may be renewed, restored, reissued or reinstated. Under  
15 Business and Professions Code section 2892.1, the Board may renew  
16 an expired license at any time within four years after the  
17 expiration.

18           Under Business and Professions Code section 490, the  
19 Board of Vocational Nursing and Psychiatric Technicians may  
20 suspend or revoke a license when it finds that the licensee has  
21 been convicted of a crime substantially related to the  
22 qualifications, functions or duties of a licensed vocational  
23 nurse.

24           Under Business and Professions Code section 125.3, the  
25 Board of Vocational Nursing and Psychiatric Technicians may  
26 request the administrative law judge to direct a licentiate found  
27 to have committed a violation or violations of the licensing act  
28 to pay a sum not to exceed the reasonable costs of the



1 investigation and enforcement of the case.

2 4. DRUGS

3 "Morphine sulfate" is a Schedule II controlled  
4 substance as designated by Health and Safety Code section  
5 11055(b)(1)(M).

6 "Vicodin," a compound consisting of 5 mg. hydrocodone  
7 bitartrate (also known as dihydrocodeinone) and 500 mg.  
8 acetaminophen per tablet, is a Schedule III controlled substance  
9 as designated by Health and Safety Code section 11056(e)(4).

10 Under Health and Safety Code section 11032, the term  
11 "narcotic" means a controlled substance classified in Schedules I  
12 or II as defined in section 11054 or 11055 of that code.

13 Under Health and Safety Code section 11032, the term  
14 "restricted dangerous drug" means a controlled substance  
15 classified in Schedules III and IV as defined in sections 11056  
16 and 11057 of that code.

17 CHARGES AND ALLEGATIONS

18 5. Respondent has subjected her license to discipline  
19 under Business and Professions Code section 2878(a) on the  
20 grounds of unprofessional conduct as defined in section 2878.5(e)  
21 of that code in that while on duty as a licensed vocational nurse  
22 at Watsonville Community Hospital in Watsonville, California,  
23 respondent falsified, made grossly incorrect, grossly  
24 inconsistent or unintelligible entries in hospital and patient  
25 records pertaining to narcotics or dangerous drugs in the  
26 following respects:

27 ///

28 ///



1 a. On or about June 11, 1996, at 0930 hours,  
2 respondent signed for 10 ml. of morphine sulfate for patient K.M.  
3 on the Pyxis system<sup>1</sup>, an amount 6 ml. in excess of the  
4 physician's orders, charted wastage of 8 mg., but failed to chart  
5 administration of 2 ml. of morphine sulfate on the patient's  
6 medication record or the nurse's notes, or otherwise account for  
7 2 mg. of morphine sulfate.

8 b. On or about June 16, 1996, at 1316 hours,  
9 respondent signed for 15 mg. of morphine sulfate for patient G.H.  
10 on the Pyxis system, charted a "circled" administration of 4 mg.  
11 of the substance at 1305 hours ("circled" indicating the  
12 substance had not been administered), but failed to record  
13 wastage, chart administration of the substance on the patient's  
14 medication record or otherwise account for 15 mg. of morphine  
15 sulfate.

16 c. On or about June 16, 1996, at 1447 hours,  
17 respondent signed for two Vicodin tablets for patient N.W. on the  
18 Pyxis system, but failed to chart administration of the substance  
19 on the patient's medication record or nurse's notes, or otherwise  
20 account for 2 Vicodin tablets.

21 d. On or about July 1, 1996, at 1148 hours,  
22 respondent signed for 10 mg. of morphine sulfate for patient L.C.  
23 on the Pyxis system, an amount in excess of the physician's order  
24 for 2 mg. of the substance, but failed to chart administration of  
25 the substance on the patient's medication record or nurse's  
26

27 1. PYXIS is a computerized controlled substance/dangerous  
28 drug sign out system whereby medications are signed out by the  
requestor, who enters the patient's name, the medication and the  
amount of the drug requested. The medication drawer of the PYXIS  
system opens and the nurse removes the medication.



1 notes, or otherwise account for 10 mg. of morphine sulfate.

2 e. On or about July 1, 1996, at 1214 hours,  
3 respondent signed for 10 mg. of morphine sulfate for patient L.C.  
4 on the Pyxis system, an amount in excess of the physician's order  
5 for 2 mg. of the substance, charted wastage of 2 mg. and the  
6 administration of 2 mg. of morphine sulfate on the patient's  
7 medication record (date not recorded) and nurse's notes, but  
8 failed to account for 6 mg. of morphine sulfate.

9 6. Respondent has subjected her license to discipline  
10 under Business and Professions Code section 2878(a) on the  
11 grounds of unprofessional conduct as defined in section 2878.5(a)  
12 of that code in that during the period June 11, 1996, through  
13 July 1, 1996, while on duty at Watsonville Community Hospital as  
14 a licensed vocational nurse in Watsonville, California,  
15 respondent obtained morphine sulfate and Vicodin by fraud,  
16 deceit, misrepresentation or subterfuge in violation of Health  
17 and Safety Code section 11173(a) by misrepresenting on the  
18 hospital records that she had obtained the morphine sulfate and  
19 Vicodin for various patients, as set forth in paragraph 5, when,  
20 in fact, respondent obtained the substances for her own use.

21 7. Respondent has subjected her license to discipline  
22 under Business and Professions Code section 2878(f) in that on or  
23 about June 27, 1997, respondent was convicted by the court on a  
24 plea of guilty of violating Health and Safety Code section  
25 11173(a) (obtaining controlled substance by fraud, deceit,  
26 misrepresentation or subterfuge) in the Santa Cruz County  
27 Municipal/Superior Court, Santa Cruz Judicial District, Case  
28 Number S7-08861, entitled People v. Elizabeth Ann Farmer. Such



1 crime is substantially related to the qualifications, functions  
2 and duties of a licensed vocational nurse, within the meaning of  
3 Title 16, California Code of Regulations, section 2521, in that  
4 such conduct evidences a present or potential unfitness of  
5 respondent to perform the functions of a licensed vocational  
6 nurse in a manner consistent with the public health, safety or  
7 welfare.

8           The circumstances of the crime are that during the  
9 period June 11, 1996, and July 1, 1996, respondent obtained  
10 controlled substances from the Watsonville Community Hospital  
11 supply for her own use, as set forth in paragraphs 5 and 6.

12           8. Respondent has subjected her license to discipline  
13 under Business and Professions Code section 490 in that on  
14 June 27, 1997, respondent was convicted of a crime substantially  
15 related to the qualifications, functions or duties of a licensed  
16 vocational nurse, as set forth in paragraph 7.

17 ///

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1 PRAYER

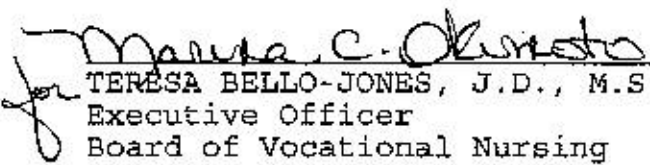
2 WHEREFORE, complainant prays that a hearing be held and  
3 that the Board of Vocational Nursing and Psychiatric Technicians  
4 make its order:

5 1. Revoking or suspending Vocational Nurse License  
6 Number VN 143399, issued to Elizabeth Ann Barnard, also known as  
7 Elizabeth Ann Farmer and Elizabeth Ann Farmer-Barnard.

8 2. Ordering Elizabeth Ann Barnard, also known as  
9 Elizabeth Ann Farmer and Elizabeth Ann Farmer-Barnard, to pay to  
10 Board of Vocational Nursing and Psychiatric Technicians its costs  
11 for the investigation and enforcement of the case according to  
12 proof at the hearing, pursuant to Business and Professions Code  
13 section 125.3.

14 3. Taking such other and further action as may be  
15 deemed proper and appropriate.

16  
17 DATED: December 9, 1998

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19   
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